

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Maine Public Utilities Commission,</b>	)	<b>Docket No. EL07-38-000</b>
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>ISO New England Inc.</b>	)	
<b>Respondent.</b>	)	

**MOTION TO INTERVENE AND ANSWER OF THE NEW ENGLAND  
CONFERENCE OF PUBLIC UTILITY COMMISSIONERS AND THE MAINE  
OFFICE OF THE PUBLIC ADVOCATE IN SUPPORT OF COMPLAINT OF  
MAINE PUBLIC UTILITIES COMMISSION**

Pursuant to Rules 212, 213 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission's ("FERC" or "Commission"), 18 C.F.R. §§ 385.212, 385.213, and 385.214 (2008) and the Notice of Extension dated October 3, 2008, the New England Conference of Public Utilities Commissioners ("NECPUC") respectfully files this Motion to Intervene. NECPUC and the Maine Office of Public Advocate (jointly "NECPUC") also file this answer in support of the Complaint filed by the Maine Public Utilities Commission ("MPUC") on February 26, 2007, as amended.<sup>1</sup> NECPUC and the Maine Office of Public Advocate also reserve the right to respond to any material or arguments provided by ISO-NE in response to the MPUC complaint. In support thereof, NECPUC states as follows:

---

<sup>1</sup> The Complaint was amended on September 17, 2007 in accordance with a settlement agreement in a related case, Docket No. ER07-397-000. *See* Amended Complaint of the Maine Public Utilities Commission, Docket No. EL07-38-000 (September 17, 2007), *citing ISO New England Inc. and NEPOOL Participants Committee*, 122 FERC ¶ 61,056 (2008). The Amended Complaint was further revised on September 25, 2008 to remove cost allocation from the issues raised in the Amended Complaint. *See* Revised Amended Complaint, *Maine Public Utilities Commission*, EL07-38-000 (Sept. 25, 2008)("Revised Amended Complaint").

## **I. COMMUNICATIONS**

All correspondence and communications to NECPUC in this docket should be addressed to the following individual, whose name should be entered on the official service list maintained by the Secretary in connection with these proceedings:

William Nugent  
Executive Director  
New England Conference of Public Utilities Commissioners  
500 U.S. Route One, Suite 21C  
Yarmouth, Maine 04096  
(207) 846-5440  
[bill.nugent@verizon.net](mailto:bill.nugent@verizon.net)

## **II. BASIS FOR NECPUC'S INTERVENTION**

Pursuant to Rule 214(a)(2) of the Commission's Rules of Practice and Procedure,<sup>2</sup> NECPUC moves to intervene in this proceeding. NECPUC is a not-for-profit corporation comprising all of the public utilities commissioners of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Formed over sixty years ago and funded by the New England states, NECPUC's mission is the promotion of regional cooperation and effective communication of all public utility matters within New England. As a representative of New England's interests relating to the electric industry, NECPUC has a vital stake in the operation of the New England power markets. As a representative of New England's electric industry regulators, NECPUC has a direct and substantial interest in this proceeding regarding the MPUC's complaint seeking to eliminate the double recovery of revenues to support the capital costs of equipment

---

<sup>2</sup> 18 C.F.R. § 385.214(a)(2).

needed to produce energy and provide reactive service. NECPUC requests leave to intervene and submits that its participation is in the public interest.

### **III. BACKGROUND**

Schedule 2 of ISO New England Inc.'s Open Access Transmission Tariff ("ISO-NE OATT") sets forth the rules that govern eligibility for compensation and payment for reactive power supply and voltage control service in New England.<sup>3</sup> To the extent a generation facility is directed by ISO New England Inc. ("ISO-NE") to produce or absorb reactive power, that facility is compensated under the Schedule 2 rate for its provision of reactive power and for the energy costs associated with the reactive power provided. The generator also is compensated for the capability to provide reactive service.

The existing rate design under Schedule 2 of the ISO-NE OATT ("Schedule 2") consists of a fixed capacity cost ("CC") component and three variable components:

(1) Lost Opportunity Cost ("LOC"), which compensates a generator for the lost opportunity in the energy market when the generator would otherwise be economically dispatched but is directed by ISO-NE to reduce real power output to provide more reactive power; (2) the cost of energy consumed ("SCL"), which compensates for the cost of energy consumed by a generator solely to provide reactive power support;<sup>4</sup> and (3) the Cost of Energy Produced ("PC") component which compensates a generator that was not economically dispatched when it is directed to come on line or increase power above its economic loading point to provide local reactive support. The Revised Amended Complaint, concerns only the CC component of Schedule 2.

---

<sup>3</sup> See Schedule 2 to ISO-NE's OATT at Original Sheet No. 735.

<sup>4</sup> The Complaint, as amended, does not propose changes to the LOC, SCL, or PC components of Schedule 2.

At the time the CC component was originally negotiated, the monthly capacity payment that would be applicable if the load serving entity had not purchased sufficient capacity through the bilateral market<sup>5</sup> was \$0.17/kW month.<sup>6</sup> In the New England Power Pool (“NEPOOL”) filing implementing the original negotiated CC component of the Schedule 2 rate, advocates for a reactive capacity charge asserted that a capital cost component under Schedule 2 was important because “...the capital costs covered by the CC charge are not necessarily recoverable in the market-based real power markets and therefore it is appropriate to establish an administratively set rate to allow generators to recover such costs and be incentivized to provide VAR support capability and service.”<sup>7</sup> In comparison to the \$0.17/kW month 2001 ICAP deficiency charge, the capacity Transition Payments under the FCM Settlement are in the range of \$3.05 to \$4.10 per kW month.<sup>8</sup> The first FCM auction resulted in a capacity price of \$4.50 per kW month.<sup>9</sup>

On October 13, 2006, the NEPOOL Participants Committee (“NPC”) voted on changes to the Schedule 2 rate. The NPC approved a rate increase to the CC component of Schedule 2. On December 29, 2006, in a joint filing at the Commission, ISO-NE and NEPOOL (“Joint Filers”) proposed the increase to the CC component of the Schedule 2 rate which had been approved by the NPC at its October 13, 2008 meeting. The proposed rate would have increased the original negotiated rate from \$1.05 to \$2.32/kVAR-year.<sup>10</sup>

---

<sup>5</sup> This payment was called the Installed Capacity (“ICAP”) deficiency charge.

<sup>6</sup> *Sithe New England Holdings, LLC v. FERC*, 308 F.3<sup>rd</sup> 71 (2002).

<sup>7</sup> New England Power Pool Seventy-Third Agreement Amending the Restated NEPOOL Agreement, Docket No. ER01-2161-000 at 10 (May 29, 2001).

<sup>8</sup> *See Devon Power, LLC*, 115 FERC ¶ 61,340 at P 30 (June 16, 2006) (“Settlement Order”), FERC Docket Nos. ER03-563-030 and -005 at P 30.

<sup>9</sup> This was the floor price for the first auction. *See* ISO-NE Transmittal Letter, dated March 3, 2008 at 2 in Docket No. ER08-633-000.

<sup>10</sup> Docket No. ER07-397-000, December 29, 2006 Joint Filing Transmittal Letter at 3.

The MPUC, the Central Maine Power Company (“CMP”) and the New Hampshire Public Utilities Commission (“NH PUC”) protested the CC component rate increase arguing, in relevant part, that because the revenue stream from the FCM settlement compensates generators for their capital costs of providing generation and the same equipment is needed to provide reactive service, the two revenue streams constituted a “double recovery” for generators.<sup>11</sup> In response to the protests, the Joint Filers stated that there was no double recovery during the transition period because the transition payments were lower than the cost of new entry (“CONE”) to be used in the first Forward Capacity Auction (“FCA”). In comparison to the transition period, the Joint Filers noted that under the first FCA, the capacity payments will be set by the market and will reflect the actual cost of new entry.<sup>12</sup> Accordingly, ISO-NE committed to:

proposing, for implementation prior to the first FCA commitment year, Tariff provisions to *ensure* that Resources eligible for CC payments under Schedule 2 for providing reactive supply and voltage control do not receive double compensation.<sup>13</sup>

On February 28, 2008, the Commission issued an Order in which it accepted and suspended the proposed rate schedule and set the proposed rate for hearing and settlement procedures. *ISO New England, Inc.*, 118 FERC ¶ 61,163 (2007).<sup>14</sup> With respect to the double recovery issue, the Commission stated:

---

<sup>11</sup> See Notice of Intervention and Protest of the Maine Public Utilities Commission, dated January 19, 2007, Notice of Intervention and Protest of the New Hampshire Public Utilities Commission, dated February 9, 2007, and Motion to Intervene and Protest of the Central Maine Power Company in Docket No. ER07-397-000, dated January 19, 2007.

Motion for Leave to Answer and Answer of ISO New England Inc. and the New England Power Pool, Docket No. ER07-397-000, filed February 5, 2007, at 14 (emphasis added).

<sup>13</sup> *Id.*

<sup>14</sup> With regard to the transition period, the Commission also determined that there is no double recovery stating that “transition payments do not compensate resources for their reactive power capabilities since they are below the cost of new entry.” *ISO New England and NEPOOL Participants Committee*, 118 FERC ¶ 61,163 at P. 30. The MPUC, the NHPUC and CMP filed a

... the Commission is concerned that double recovery can occur during the first FCA since the payments equal the cost of new entry. The ISO commits to proposing, for implementation prior to the first FCA commitment year, Tariff provisions to ensure that Resources eligible for CC payments under Schedule 2 for providing reactive supply and voltage control do not receive double compensation. Accordingly, the Commission will require ISO-NE to implement, prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to *ensure* that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.<sup>15</sup>

The settlement procedures resulted in a settlement of the CC rate but left open the double recovery issue, as it applies both during the Transition Period and during the FCM.<sup>16</sup>

On February 26, 2007, the MPUC filed a Complaint addressing two aspects of Schedule 2. One was the socialization of the PC charges. However, this aspect of the original complaint has been removed in the Revised Amended Complaint. The remaining issue in the Complaint therefore is the issue of whether Schedule 2 should be

---

request for rehearing on this double recovery issue during the transition period and NECPUC filed comments in support of the request for rehearing. *See* Request for Rehearing of the Maine Public Utilities Commission, the New Hampshire Public Utilities Commission, and Central Maine Power Company, Docket No. ER07-397-001, filed March 30, 2007; *see also* Request for Leave to Answer and Answer to Request for Rehearing of the New England Conference of Public Utility Commissioners, Docket No. ER07-397-001, filed April 18, 2007. This request for rehearing is still pending. *See ISO New England Inc. and NEPOOL Participants Committee*, 123 FERC ¶ 61,294 (2008).

<sup>15</sup> *Id.* P. 30 (emphasis added).

<sup>16</sup> The Settlement Agreement provided that no Settling Party may seek a change to the settled CC Rate of \$2.19/kVAR-yr. pursuant to either Section 205 or Section 206 of the Federal Power Act, except for the limited purpose of addressing the issue of any double recovery of capacity costs that arises from the combination of Schedule 2 CC rate payments and payments made in accordance with the FCM settlement (1) if the Commission concludes on rehearing in Docket No. ER07-397-001 and/or in response to the Amended Complaint in Docket No. EL07-38-000 that changes are required under the Federal Power Act to eliminate any such double recovery of capacity costs and/or (2) in connection with the requirement in *ISO New England Inc.*, 118 FERC ¶ 61,163 at P 30 (2007), that ISO-NE “implement, prior to the commencement of the first FCA commitment year beginning June 1, 2010, tariff provisions to ensure that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.”

revised to eliminate or reduce the CC component of Schedule 2, since recovery of the generation units' capital costs is already provided for under the FCM market rules.

#### **IV. NECPUC'S ANSWER**

There are two fundamental points underlying both the Complaint and the Commission's Order in Docket No. ER07-397-000: (1) the same equipment is used for generating power and providing reactive service; and (2) the non-capital cost provisions of Schedule 2 compensate generators for providing service (as opposed to capital cost compensation); therefore the sole purpose of the CC payment under Schedule 2 is capital cost compensation for the equipment for providing reactive service (which is the same as that needed to generate power). Given these fundamental and undisputed points, and ISO-NE's obligation to *ensure* that there is no double recovery beginning in 2010, NECPUC expected ISO-NE to take steps to remove the redundant revenue stream provided by the capital cost component of Schedule 2.

##### **A. ISO-NE's position as expressed in Montalvo Memorandum**

NECPUC understands from discussions with ISO-NE as well as a memorandum issued on March 18, 2008 by Marc Montalvo of the ISO-NE staff<sup>17</sup> that ISO-NE's position is that it does not need to file any tariff provisions. The basis of this conclusion appears to be a theory that generators, with the Schedule 2 capital cost payments already in hand, will reduce their bids in the FCM to net out the Reactive Service capital cost payment as a means of being more competitive in the FCM market. As discussed below, this theory is fundamentally flawed and is not compliant with FERC's order because it

---

<sup>17</sup> Hereinafter referred to as "Montalvo memo." The Montalvo memo can be accessed at the following link:  
[http://www.iso-ne.com/committees/comm\\_wkgrps/mrktts\\_comm/mrktts/mtrls/2008/may13152008/a10\\_iso\\_var\\_capacity\\_payments\\_memo\\_03\\_18\\_08.doc](http://www.iso-ne.com/committees/comm_wkgrps/mrktts_comm/mrktts/mtrls/2008/may13152008/a10_iso_var_capacity_payments_memo_03_18_08.doc).

does not “implement tariff provisions to *ensure* that resources eligible for CC payments under Schedule 2 that provide reactive supply and voltage control do not receive double compensation.”<sup>18</sup>

The Montalvo memo’s proposal to make no changes appears to be based on ISO-NE’s concern “that VAR capable resources may change their [FCM] bidding strategies in response to different payment mechanisms.” *Id.* The Montalvo memo further conjectures:

If VAR capable resources included costs associated with minimum VAR capacity requirements into their FCM offers, then these resources would be at a competitive disadvantage in the auction. Such resources would risk not clearing in the FCA and losing the opportunity to earn capacity revenues and energy revenues. If VAR capable resources netted the minimum VAR capacity costs from their FCM offers, and there is no separate VAR capacity payment that covers the costs for providing minimum VAR service, then these resources would be under compensated. On the other hand, suppose that there exists a separate VAR capacity payment that guarantees the recovery of minimum VAR capacity costs. If the FCM is not strongly price competitive, VAR capable resources might have an incentive to include costs associated with the minimum VAR capacity requirements into their FCM offers, which results in double compensation.

Montalvo memo at 4.

## **B. Flaws in ISO-NE Analysis**

ISO-NE’s reasoning is deficient on several counts. First, ISO-NE appears to incorrectly assume that the equipment provided to produce VARS is not the same equipment used to generate electricity. This appears to be the assumption underlying its conclusion that generators would actually increase their bids in the FCM to recover “costs associated with minimum VAR capacity requirements,” which strategy might put these generators at a “competitive disadvantage in the FCA.” Alternatively, ISO-NE posits that if generators net their VAR capacity costs from their FCM bids and there is no

---

<sup>18</sup> *ISO New England, Inc.*, 118 FERC ¶ 61,163 at P. 30.



capital cost revenue stream under Schedule 2 “these resources would be under compensated.”<sup>19</sup> In both these hypotheticals, ISO-NE begins with a fundamentally flawed assumption--that there is an incremental cost for providing minimum VAR service over and above the capital costs necessary to produce generation. The equipment used for generating power and providing reactive power is the same. See *Midwest ISO Transmission Owners*, 122 FERC ¶ 61,305 (2008), (“the incremental cost of reactive power service within the dead band is minimal” since “the purpose for which generation assets are built (including reactive power capability to maintain voltage levels for generation entering the grid) is to make sales of real power).” Thus there is no or only a *de minimus* incremental cost of reactive power capability.

ISO-NE and NEPOOL have already acknowledged that when the FCM market is in place, “FCM payments will be set by the market and will reflect *the actual cost of new entry as revealed by new Resources entering the market.*”<sup>20</sup> Further, FERC has found that once FCM begins, *the FCM auction price equals the cost of new entry.*<sup>21</sup> Thus, generators in the FCM are fully compensated for the cost of their equipment used to produce power and provide minimum VAR service as required in these generators’ interconnection agreements. Since the equipment needed to generate power and provide reactive service is the same, there is no need for a second revenue stream for generators receiving FCM revenues.

---

<sup>19</sup> Montalvo memo at 4.

<sup>20</sup> February 25, 2007 Motion for Leave to Answer and Answer of ISO New England, Inc. and New England Power Pool in Docket No. ER07-397-000 at 13.

<sup>21</sup> February 28 Order P. 30.

Another questionable assumption is ISO-NE's apparent belief that the unit that offers voltage support as well as capacity is the more *valuable* unit and should clear in the FCM over one such as demand response that offers only capacity. ISO-NE appears to believe that if the Schedule 2 revenue stream is maintained as well as the FCM revenue stream, generators will lower their bids to net the revenue received from voltage support. Thus, these units will be more competitive, in ISO-NE's view, than demand response and will be more likely to set the clearing price.

There are two problems with this analysis. First, giving generators a dual recovery stream so that they can be more competitive in the FCM may be one approach to developing a capacity market but it clearly was not the one developed in the FCM settlement. There was no preference to be given to non-demand response units. In fact quite the opposite is true. The unique and innovative part of the FCM market is that *it allows demand response to compete on an equal footing in the capacity market.*<sup>22</sup> Further, the Commission has recently stated, "our goal is for RTOs and ISOs to develop rules to ensure the treatment of supply and demand resources on a comparable basis to the extent each is technically capable of providing the service."<sup>23</sup> The significant participation of demand response in the FCM, in turn, can reduce the need for additional generation and transmission.

Finally, even if this approach did make the FCM market more efficient, which as stated above gives short shrift to the value of demand response and is based on incorrect assumptions, the result fails to address FERC's requirement that ISO-NE ensure that

---

<sup>22</sup> See, e.g. *ISO New England, Inc.*, 123 FERC ¶ 61,290 at P. 6 (2008) (noting ISO-NE's assertion that one of the goals of the FCM was to encourage participation of demand resources).

<sup>23</sup> *Wholesale Competition in Regions with Organized Electric Markets*, 72 Fed. Reg. 36,276 (July 2, 2007), FERC Stats. & Regs. ¶ 32,617, P 35 (2007) (Competition ANOPR).

there is no double recovery. A mathematical theory cannot *ensure* that the entity receiving reactive Schedule 2 revenues will voluntarily deduct these revenues from their bid. The only way to ensure that there is no double recovery is to eliminate or reduce one of the revenue streams.<sup>24</sup>

Finally, as long as there is a capacity surplus and a floor, ISO-NE's own theoretical construct does not hold up, even accepting, *arguendo*, ISO-NE's incorrect assumption that there are incremental **capacity** costs of providing minimum reactive service beyond the capital costs of providing generation service.<sup>25</sup> ISO-NE posits that capacity sellers will voluntarily reduce their bids to net their reactive service payments from their bids. Even if there were a way to ensure that this would actually occur, and there is not, existence of a price floor places in question even the theoretical underpinning for ISO-NE's refusal to implement changes to Schedule 2 to ensure that generators do not double recover their equipment capital costs.<sup>26</sup> In the first FCA, for which ISO-NE is obligated to ensure that there is no double recovery, the auction stopped, consistent with Market Rule 1, when the price reached the price floor of 0.6 CONE (\$4.50 per kW month).

The failure of the Montalvo memo to account for the existence of the price floor is a significant flaw in ISO-NE's analysis because the price floor prevented the auction from reaching the market price of capacity. Therefore, it is unlikely that the existence of

---

<sup>24</sup> It is worth noting here that FERC did not give ISO-NE the option to do nothing. It directed ISO-NE to implement tariff provisions to ensure that there is no double recovery. Since ISO-NE did not request rehearing on this point it is required to comply with the Commission's order.

<sup>25</sup> This incorrect assumption is evident both in the text of and the appendix to the Montalvo memo. *See, e.g.* Montalvo memo at 4 and Appendix at 1 (containing separate equation variables for the cost of capacity ( $A_v$ ) and the capacity cost of meeting the minimum VAR requirements ( $B_v$ )).

<sup>26</sup> Under Market Rule 1, during the first three auctions, "[t]he Capacity Clearing Price shall not fall below 0.6 CONE." ISO-NE Market Rule 1 § III.13.2.7.3.

the Schedule 2 revenue stream caused generators to reduce their bids to net out the Schedule 2 CC payments as hypothesized in the Montalvo memo. Accordingly, rather than ensuring that there will be no double recovery prior to the first FCA, the ISO's response that it does not need to reduce the CC component of Schedule 2 assures that there will be at least some generators that receive double recovery for the first and likely the second and third FCAs.

Therefore, the theory advanced in the Montalvo memo does not resolve the double recovery issue raised in the MPUC Complaint.

**C. The Complaint provides an alternative to a total elimination of the Capital Cost Component of Schedule 2.**

In addition to the double recovery issue raised in the Complaint, recent case law makes clear that there is no requirement to provide compensation for reactive service capacity within the dead band. FERC has stated:

if a generator is to sell (and be able to deliver) its power to a customer, reactive power is essential to the transaction. Thus, it is hardly surprising that the Commission has concluded, as explained below, that the provision of sufficient reactive power is an obligation of a generator interconnected to the system, and that, as a general matter, a generator is not entitled to separate compensation for providing reactive power within its dead band.<sup>27</sup>

Thus, RTOs may choose, but are not required to, provide compensation to generators for the capability to provide reactive service (if such compensation is necessary) within the power factors specified in interconnection agreements.<sup>28</sup> While ISO-NE may choose to compensate generators for reactive service capability, choosing not to eliminate the

---

<sup>27</sup> *Southwest Power Pool*, 119 FERC ¶ 61,199 P. 28 (2007).

<sup>28</sup> ISO-NE defines power factor as the ratio Real Power to Apparent Power. Apparent Power, measured in Volt-Amps, equals  $((\text{Real Power Watts})^2 + (\text{Reactive Power VARs})^2)^{1/2}$ . Montalvo memo at 2 n.2. ISO-NE further explains that "most generators installed in the U.S. have power factors of 0.85 to 0.9, representing an ability to provide 43 to 53% of the resource output as VAR rather than energy." *Id.* at 2 (internal footnotes removed).

double recovery that results from the two revenue streams to compensate for the same equipment is neither justified nor consistent with the obligation imposed by the Commission under the June 10th Order to *ensure that there is no double recovery* resulting from the two payment streams.

That there are no incremental costs of reactive power capability may be one factor underlying FERC's policy that that reactive service within a specified power factor range or dead band is a requirement for generator interconnection and there is no requirement to provide a capacity payment to provide reactive service within the dead band.<sup>29</sup> In any event, as discussed above, generators are compensated for providing reactive service under the non capital cost provisions of Schedule 2 and are compensated for the capital costs of their generation equipment through the FCM.

It appears that ISO-NE is concerned that, going forward, generators will not be built with the capacity to provide service outside of the dead band unless there is a separate revenue stream to compensate them for this additional capability. ISO-NE states:

From the ISO's perspective, the additional dynamic VAR capability that many generators in the region provide is valuable. If, lacking appropriate financial inducements, generators were unwilling to provide the additional dynamic VAR capability required to reliably operate the system, the ISO would have to work with transmission owners to install transmission devices which are normally more expensive and more limited than generators. Since the ISO does, in fact, require dynamic reactive capability above and beyond what is minimally required from generators for interconnection, and this service can be had from either generator

---

<sup>29</sup> *Id.* (rejecting arguments that generators required compensation for providing reactive service within the dead band as inconsistent with Order Nos. 2003 and 2003-A and stating "the Commission has stated that an interconnecting generator should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation and that generators interconnected to a transmission provider's system need only be compensated where the transmission provider directs the generator to operate outside the dead band.")

or transmission sources, there is a clear value in exposing the cost of this service in order to ensure the most efficient procurement.<sup>30</sup>

While NECPUC may share ISO-NE's view that reactive service capability is valuable, it is unclear whether a need for additional financial inducements, and in particular for the CC payment within the dead band, is supported by the facts. For example, are new generators in fact not capable of providing capability outside of the dead band? Since generators offering reactive service are compensated for opportunity costs, is there already an incentive to offer this service outside of the dead band? Are there any other benefits to generators in having the additional capacity to provide reactive service outside the dead band? How many generators currently are capable of providing service outside of the dead band? What are the incremental costs of providing capacity to provide service outside of the dead band? All of these questions should be addressed.

The MPUC Complaint provides one approach to addressing (1) the double recovery issue and (2) ISO-NE's concern about encouraging new generators to build generation facilities that are capable of providing capability *outside the dead band*. ISO-NE should consider this approach or develop another one in order to comply with the Commission's directive in Docket No. ER07-397-000. The MPUC's approach would reduce the annual recovery from Schedule 2 from approximately \$19 million to approximately \$6 million<sup>31</sup> if all FCM generation units were capable of providing reactive service outside of the dead band.<sup>32</sup> In some other RTOs, it appears that the generator is paid for service outside of dead bend as a result of a directive, either in

---

<sup>30</sup> Montalvo memo at 3.

<sup>31</sup> Affidavit of Wayne Whittier at ¶ 20, appended to Original Complaint.

<sup>32</sup> The non-generation units receiving Schedule 2 payments would continue to receive these payments without reduction since they would not be receiving FCM payments.

response to a specific directive or in accordance with the generator's voltage schedule.<sup>33</sup> Such alternative approaches should be further considered as well. ISO-NE has access to information regarding which units can provide reactive service outside of the dead band; thus, it can determine which entities may receive a payment for reactive service capability outside of the dead band. Alternatively, ISO-NE could model its payments after some of the "outside of the dead band" proposals recently approved by FERC.<sup>34</sup> Whichever methodology may be chosen to provide capital cost compensation for providing reactive service outside the dead band (to the extent additional capacity payments are needed), ISO-NE must comply with FERC's order by ensuring that there is no double recovery.

#### **IV. CONCLUSION**

ISO-NE's memoranda in which it states a preference for not filing any tariff provisions to address the double recovery issues, and ISO-NE's answer if it adopts that position does not comply with the Commission's February 28, 2008 Order. NECPUC urges the Commission to order ISO-NE to adopt the MPUC's dead band proposal or

---

<sup>33</sup> See, e.g., *Midwest ISO Transmission Owners*, 122 FERC ¶ 61,305 at 91.

<sup>34</sup> *Id.*

reexamine this matter and develop tariff provisions to ensure that there is no double recovery resulting from the payments under FCM and Schedule 2 once the first FCM commitment period begins in 2010.

Dated: October 14, 2008

Respectfully submitted,

/s/ William Nugent  
William Nugent  
Executive Director  
New England Conference of Public  
Utilities Commissioners  
500 U.S. Route One, Suite 21C  
Yarmouth, Maine 04096  
(207) 846-5440

Eric J. Bryant  
Office of Public Advocate  
112 State House Station  
Augusta, ME 04333-0112  
(207) 287-2445



### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 14th day of October, 2008.

/s/ Harry A. Dupre  
Harry A. Dupre  
DUNCAN, WEINBERG, GENZER  
& PEMBROKE, P.C.  
1615 M Street, N.W.  
Suite 800  
Washington, DC 20036  
(202) 467-6370